752.

SUPREME COURT OF THE UNITED STATES.

No. 53.

WILLIAM A. BRADLEY, PLAINTIFF IN ERROR,

VERSUS

THE WASHINGTON, ALEXANDRIA, AND GEORGE TOWN STEAM PACKET CO.

ERROR TO THE CIRCUIT COURT, U. S. FOR WASHINGTON, D. C.

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UNITED STATES OF AMERICA. ss.

The President of the United States, To the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the County of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you or some of you, wherein the Washington, Alexandria and George Town Steam Packet Company, Plaintiffs and William A. Bradley, Defendant, a manifest error hath happened to the great damage of the said William A. Bradley, as by his complaint appears we being willing that error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the Monday of next in said Supreme Court to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Honourable ROGER B. TANEY Chief Justice of the said Supreme Court.

Issued this 29th day of June 1838.

W. BRENT, Clk.
Ct. Ct. Dst. Cola.
for Wasgn. Cty.

DISTRICT OF COLUMBIA, TO WIT:

The United States of America, To the Washington Alexandria and George Town Steam Packet Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme court, of the United States on the Monday of next, pursuant to a writ of Error filed in the Clerks Office of the Circuit Court of the United States for the District of Columbia in the County of Washington wherein William A. Bradley is plaintiff in Error and you are Defendants in Error, to shew cause if any there be why Judgment rendered against the said William A. Bradley in the said Writ of Error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch Chief Judge of the Circuit Court of the District of Columbia, this 29th day of June 1838.

W. CRAN CH

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KNOW ALL MEN BY THESE PRESENTS that we William A. Bradle Th S Thurston and P. Bradley are held and firmly bound unto the Washington Alexandria and George Town Steam Packet Company in the full and just sum of five thousand dollars current money to be paid to the said the Washington Alexandria and George Town Steam Packet Company their certain attorney executors administrators or assigns which payment well and truly to be made and done we bind ourselves and each of us our and each of our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated this 29th day of June 1838.

Whereas lately at a Circuit Court of the United States for the District of Columbia sitting for the County of Washington in a suit depending in the said Circuit Court wherein the said the Washington Alexandria and George Town Steam Packet Company were plaintiffs and the said William A. Bradley were defendant judgement was rendered against the said William A. Bradley and he having obtained a writ of error and filed a copy thereof in the Clerks office of the said Circuit Court to reverse the judgement in the aforesaid suit and a citation directed to the said the Washington Alexandria and George Town Steam Packet Company citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the Monday of next

Now the condition of the above obligation is such that if the said William A. Bradley shall prosecute said writ to effect and answer all damages and costs if he fails to make his plea good then the above obligation to be void, otherwise to be and remain in full force and virtue.

Signed sealed and delivered in the presence of C. FOWLER, Tran.

W. A. BRADLEY [SEAL.]
TH. S. THURSTON [SEAL.]
PHINEY BRADLEY [SEAL.]

Approved
W. CRANCH.

Copy
Test:
W. BRENT, Clk.

Style of Court. *District of Columbia, to wit:*

At a Circuit Court of the District of Columbia, begun and held in and for the County of Washington at the City of Washington on the fourth Monday of March being the twenty-sixth day of the same month in the year of our Lord one thousand eight hundred and thirty eight and of the Independence of the United States the sixty-second.

Present.

The Honorable { WILLIAM CRANCH, Chief Judge. / BUCKNER THURSTON & / JAMES S. MORSELL } Asst. Judges.

ALEXANDER HUNTER, Esquire, Marshal.

WILLIAM BRENT, Clerk.

In the record of the proceedings of the said Court, among others, are the following, to wit:

Parties. The Washington, Alexandria & George Town Steam Packet Co. against William A. Bradley.

Be it remembered that heretofore, to wit: on the twenty-fourth day of December in the year of our Lord one thousand eight hundred and thirty-four, the said plaintiff by Richard S. Coxe, Esquire, its Attorney prosecuted and sued forth out of the Circuit Court here the *the* United States writ of Capias ad respondendum, directed to the Marshal of the District aforesaid, in the words and of the tenor following, to wit:

Writ of Capias ad respondendum *District of Columbia, to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

We command you that you take William A. Bradley, late of Washington County, if he shall be found within the County of Washington in your said District, and him safely keep, so that you have his body before the Circuit Court of the District of Columbia, to be held for the County aforesaid, at the City of Washington, on the fourth Monday of March next, to answer unto the Washington, Alexandria and George Town Steam Packet Company in a plea of Trespass on the case and so forth.

Hereof fail not at your peril and have you then and there this writ.

Witness W. Cranch, Esquire, Chief Judge of our said Court at the City of Washington the day of December, Anno Domini one thousand eight hundred and thirty-four.

Issued the 24th day of December 1834.

(COXE) WM. BRENT, Clk.

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And the aforesaid plaintiff by its Attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

District of Columbia, Washington County, to wit: Nar.

William A. Bradley late of the County aforesaid, was attached to answer unto the Washington Alexandria, and George Town Steam Packet Company in a plea of Trespass on the case and so forth—And whereupon the said plaintiffs by Coxe and Carlisle attorneys complain, that whereas heretofore to wit: on the 7th day of February 1832 at the County aforesaid the said defendant was indebted to the said plaintiffs in the sum of two thousand seven hundred and sixty-five dollars for the use and hire of a certain Steam Boat called the Franklin, by the said plaintiffs before that time let to hire and delivered to the said defendant at his special instance and request, and by the said defendant under and by virtue of that letting to hire before that time had and used: and being so indebted the said defendant in consideration thereof afterwards, to wit: on the day and year aforesaid at the County aforesaid undertook and then and there promised the plaintiffs to pay them the said sum of money, when he should be thereunto required.

And whereas afterwards, to wit: on the day and year aforesaid, at the County aforesaid, in consideration that the said plaintiffs at the like special instance and request of the said defendant had before that time let to hire and delivered to him the said defendant a certain Steam Boat called the Franklin, And that the said defendant had under and by virtue of the said last mentioned letting to hire before them had and used the same, he the said defendant undertook and then and there faithfully promised the said plaintiffs to pay them so much money as they therefore reasonably deserved to have of the said defendant, when afterwards he should be thereunto requested: and the said plaintiffs aver that they therefor reasonably deserved to have of the said defendant the further sum of two thousand four hundred and fifteen dollars ($2415,) like money, to wit: at the County aforesaid, whereof the said defendant afterwards to wit: on the day and year last aforesaid had notice—Yet the said defendant the said several sums of money herein mentioned, (altho' often thereto requested) hath not paid, or any part thereof, but the sum to pay or any part thereof hath hitherto wholly refused, and still doth refuse to the damage of the plaintiffs in the sum of three thousand dollars, current money, and therefore they bring suit; and so forth.

John Doe & } Pledges.
Richard Roe. }

COXE & CARLISLE,
Plffs. Attys.

March Term 1835 At which mentioned fourth Monday of March in the year of our Lord one thousand eight hundred and thirty five, and the day of the return of the aforegoing writ, comes into the Circuit Court here, the said plaintiffs by their Attorney aforesaid; and the Marshal of the District aforesaid to whom the said aforegoing writ was in form aforesaid, directed, makes return thereof to the Court here thus endorsed, to wit:

Marshal's return "Cepi,"
A. HUNTER, Marshal.

Defendant's appearance. And the said defendant being called appears in Court here by Joseph H. Bradley, Esquire his attorney; thereupon on motion of the said plaintiffs, by their attorney aforesaid, it is

Rule, Plea, and Imparlance. ruled by the Court here that the said defendant answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the Court here will be entered against him in default thereof: and the said defendant by his attorney aforesaid, defends the force and injury, when and so forth, and prays leave of the Court here to imparle until the fourth Monday of November and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, and to him it is granted, and the same day is given to the aforesaid plaintiffs also.

Nov. Term, 1835. At which mentioned fourth Monday of November in the year of our Lord one thousand eight hundred and thirty five, to which said day the said defendant had leave to imparle and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, comes again into the Circuit Court here as well the said plaintiffs by their attorney aforesaid, as the said defendant by his attorney aforesaid; and the said defendant by his attorney aforesaid, files in Court here the following plea, to wit:

Plea in Abatement.

WILLIAM A. BRADLEY
at suit
THE WASHINGTON, ALEXANDRIA AND GEORGE TOWN STEAM PACKET COMPANY.

William A. Bradley the Defendant in the above entitled action by Joseph H. Bradley his attorney comes and defends the force and injury when and so forth and prays judgment of the said writ and declaration, because he says that before the issuing of the said writ, to wit: at the December Term of the said Court in the year 1831—the said plaintiffs impleaded the said defendant and filed his declaration against him in a plea of Trespass on the case and of and upon the very same identical promises and undertakings in the said declaration in the present suit mentioned as by the record and proceedings thereof remaining in the said Court more fully appears—in which said

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suit a trial was had and judgment therein by the said Court rendered against the said defendant, from which said judgment the said defendant then and there prayed an appeal to the Supreme Court of the United States in due form of law, which said prayer was granted, and the said cause was thereupon removed to the said Supreme Court at the January Term thereof in the year 1834—And the said defendant further says that the parties in this and the said former action are the same and not different or other persons; and that the said suit so brought and prosecuted against him the said William A. Bradley as aforesaid was still pending in the said Supreme Court of the United States, when the writ in this action was issued, and this the said William A. Bradley is ready to verify, Wherefore he prays judgment of the said writ and declaration in this suit and that the same may be quashed.

District of Columbia County of Washington, to wit:
On the 7th March 1836, the within named William A Bradley made oath, before me, in due form of Law that the facts stated in the within written plea, so far as they are stated as of his own knowledge are true, and so far as they are stated as of the knowledge of any other person he believes them to be true.

Sworn to before me
W. CRANCH, Ch. J. &c.

Thereupon the said plaintiffs by their attorney aforesaid, filed in Court here the following Replication, to wit:

WASHINGTON, ALEXANDRIA AND GEORGE TOWN STEAM PACKET COMPANY vs. WILLIAM A. BRADLEY } Replication to plea in abatement.

Replication.

The plaintiffs reply, that the writ which issued in the case formerly instituted by this plaintiff against defendant in fact, issued prior to the arising of this cause of action in this case mentioned—and although it be true that the declaration filed in said cause did set forth the same cause of action as is set forth in the declaration filed in this case, yet by the final judgment entered in that case and which still remains in full force and unreversed, it was adjudged that the said cause of action not havng arisen until after the issuing of said writ, the given to the Jury in that case was improperly admitted, and the Judgment of said Circuit Court was on that ground reversed prout patet recordam—wherefore the said plaintiff says that he *out* not to be precluded from recovering in this action by any thing in the said plea contained—and prays judgment.

Thereupon further process of and upon the premises

Continuance to March 1836.

aforesaid between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the Court here thereon the said cause is continued until the fourth Monday of March next.

Appearance & Continuance to Nov 1835.

At which mentioned fourth Monday of March in the year of our Lord one thousand eight hundred and thirty six, to which said day the said cause was continued, comes again into the Circuit Court here, as well the said plaintiffs by their Attorney aforesaid, as the said defendant by his Attorney: therefore further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their Attornies aforesaid and by order of the Court here, thereon, the said cause is further continued until the fourth Monday of November next.

Appearance & Continuance to March 1837.

At which mentioned fourth Monday of November in the year of our Lord one thousand eight hundred and thirty six, to which said day, the said cause was continued, comes again into the Circuit Court here, as well the said plaintiffs by their Attorney aforesaid, as the said defendant by his Attorney aforesaid; thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties by their Attornies aforesaid, and by order of the Court here thereon the said cause is further continued until the fourth Monday of March next.

Appearance & Continuance to Nov. 1837.

At which mentioned fourth Monday of March in the year of our Lord one thousand eight hundred and thirty seven to which said day the said cause was continued, comes again into the Circuit Court here, as well the said plaintiffs by their Attorney aforesaid, as the said defendant by his Attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their Attornies aforesaid, and by order of the Court here thereon the said cause is continued until the fourth Monday of November next.

Appearance and Continuance to March 1838.

At which said fourth Monday of November in the year of our Lord one thousand eight hundred and thirty seven to which said day the said cause was continued comes again into the Circuit Court here, as well the said plaintiffs by their Attorney aforesaid, as the said defendant by his Attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their Attornies aforesaid, and by order of the Court here thereon, the said cause is further continued until the fourth Monday of March next.

Appearance.

At which mentioned fourth Monday of March in the year of our Lord one thousand eight hundred and thirty eight, to which said day the said cause was continued, come as well the said plaintiffs by their Attorney aforesaid as the said defendant by his Attorney aforesaid, and upon which all and singular the premises being seen, and by the

Court here understood, and mature deliberation being thereupon had, for that it seems to the Court here, that the said plea by the said defendant in form aforesaid pleaded in abatement, and the matter therein contained, are not sufficient in law to quash the said declaration of the said plaintiffs: therefore it is considered by the Court here, that the said defendant answer over to the said declaration, or judgment by the Court here will, be rendered against him in default thereof, and upon this the said defendant by his Attorney aforesaid, comes and defends the force and injury when, and so forth, and says that he did not undertake or promise in manner and form as the said plaintiffs have in their declaration above complained against him, and of this he puts himself upon the country, and the said plaintiffs do the like: therefore let a Jury thereon appear before the Court here immediately by whom &c and who neither &c to recognize &c because as well &c, whereupon for trying the issue aforesaid, it is ordered by the Court here that twenty person be drawn, by ballot, from the panel of petit Jurors returned by the Marshal to the Court here; and twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties, having each stricken out four persons from the lists thereupon the remaining twelve persons being called, came, to wit:

Plea in abatement overruled.

Rule Plea.

Non Assumsit et issue.

Veniri Facias.

1	George Sweeny	Jury.
2	Thomas Jackson	
3	Henry C. Slade	
4	William Orme	
5	Henry Haw	
6	John Hopkins	
7	C. H. W. Wharton	
8	Joseph Brooks	
9	James Marshall	
10	Charles Butler	
11	Thomas Harrison	
12	John G. Robinson	

who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said William A. Bradley, did assume upon himself, in manner and form as the aforesaid plaintiffs within against him have complained and they assess the damages of the said plaintiffs, sustained by reason of the non performance of the promise and assumption aforesaid, to the sum of Two thousand four hundred and fifteen dollars, with interest from the sixth day of February in the year of our Lord one thousand eight hundred and thirty two. Therefore it is considered by the Court here, that the said plaintiff recover against the said William A. Bradley, as well the sum of two thousand four hundred and fifteen dollars, with interest from the sixth day of February, one thousand eight hundred and thirty-two, the damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed to be sustained by occasion of the non performance of the promise and assumption aforesaid, as the sum dollars cents, by the

Verdict.

Damages.

Judgment.

court here, unto them the said plaintiffs on their assent adjudged, for their costs and damages by them about their suit in this behalf, laid out and expended; and the said William A. Bradley in mercy &c

Test:

W. BRENT
Clerk.

Memorandum.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the Court here, the said William A. Bradley, by his Attorney aforesaid, filed in Court here the following bill of exceptions, to wit:

Washington, Alexandria and George Town Steam Packet Company
vs.
WILLIAM A. BRADLEY

Exceptions. Plffs. Statement of Evidence,

Upon the trial of this cause the plaintiffs, to sustain the issue on their part, joined between the parties aforesaid, gave in evidence and read to the jury, a paper dated 19th November, 1831, signed by William A. Bradley, the said defendant, in the words and figures following, viz:

Offer to hire Boat.

"I agree to hire the Steamboat Franklin, until the Sydney is placed on the rout, to commence tomorrow, 20th instant at ($35) Thirty five dollars per day, clear of all expenses, other than the wages of Captain Nevitt.

"19th Nov. 1831. W. A. BRADLEY."

And a paper purporting to be an acceptance thereof, of same date, to wit:

Acceptance of Offer.

"On the part of the Washington, Alexandria and George Town Steam Packet Company I agree to the terms offered by William A. Bradley, Esqr. for the use of the Steam Boat Franklin, until the Sydney is placed on the route to Potomac Creek, which is thirty five dollars per day, clear of all expenses, other than the wages of Capt. Nevitt, which are to be paid by our company.

W. GUNTON,
President,

Washington City, Nov. 19th, 1831.

And also a paper addressed by said defendant to Pishey Thompson, one of the Directors of the Steam Packet Company, and by him communicated to Plaintiffs, in the words following, to wit:

Letter to Pishey Thompson.

Washington City, Dec. 5th, 1831.

PISHEY THOMPSON, Esqr.

Dear Sir—I will thank you to advise the President and Directors of Washington, Alexandria and George Town Steam Packet Company, that the navigation of the Potomac being closed by ice, we have this day commenced car-

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rying the Mail by land under our winter arrangement, and have therefore no further occasion for the steamboat Franklin, which is now in Alexandria in charge of Capt. Nevitt.

The balance due your Company, for the use of the Franklin, under my contract with Dr. Gunton, will be paid on the presentation of a bill and receipt therefor.

With great respect
Your obedient servant,
W. A. BRADLEY.

PISHEY THOMPSON, Esq. Present.

And the reply thereto from Wm. Gunton, President of the Steam Packet Company, to the Defendant, in the words following, to wit:

Washington, Dec. 6th 1831.

Answer of Gunton.

Sir—Your letter of the 5th instant to Mr. Pishey Thompson, has been this afternoon submitted to the Board of Directors of the Washington, Alexandria and George Town Steam Packet Company, at a meeting holden for the purpose. After mentioning that the navigation of the Potomac is closed by ice, and that you had commenced carrying the mail by land, under your winter arrangement, you have therein signified you have no further occasion for the Steam Boat Franklin, and that she was then in Alexandria in charge of Capt. Nevitt.

The agreement entered into by you, contains no clause making its continuance to depend on the matters you have designated, but on the contrary, an unconditional stipulation to "hire the Franklin until the Sydney is placed on the route," and I am instructed to inform you that the board cannot admit your right to terminate the agreement on such grounds, and regard it as being still in full force, and the boat as being in your charge.

However disposed the Board might have been to concur with you in putting an end to the agreement, under the circumstances you have described, if the Company had not been already in litigation with you and your colleague, for the recovery of a compensation for the use of the Franklin under another contract, to the strict letter of which a rigid adherence is contended for on your part, notwithstanding it had undergone a verbal modification, the Board could not but recollect this, and be influenced thereby.

Yours, respectfully,
W. GUNTON,
President.

WM. A. BRADLEY, Esq.

And further proved by the testimony of William Chicken, a competent witness, and duly sworn in the cause, that he was employed as Engineer by defendant, on board

the Steam Boat Sydney, mentioned in the foregoing papers; that said Steam Boat was in Baltimore in the month of November 1831, and continued there until the 26th day of January 1832, when she left that port for Washington City, and, after several interruptions and delays, arrived at Washington on the 6th February, and was placed on the route to Potomac Creek on the 7th of February 1832; and that said Steam Boat Sydney belonged to defendant, and that she was not finished so as to be able to start from Baltimore until the 25th of January. And thereupon, the said plaintiffs claim hire of the said Steam boat Franklin, from the 20th day of November 1831, to the 6th day of February 1832, seventy nine days at $35 per day, allowing credit for $350 as paid thereon, by the said defendant, and leaving a balance of $2,415; after which evidence had been given on the part of plaintiff as aforesaid.

Defendants Statement of Evidence.

The defendant to support, the issue on his part above joined, offered to prove by competent witnesses, that for several years immediately preceding the date of said contract, he had been, and was still. contractor for the transportation of the United States mail from Washington to Fredericksburg; that the customary route of said mail was by steamboat from Washington to Potomac Creek; thence by land to Fredericksburg, in which Steam Boat passengers were also usually transported on said route; that during all that time the defendant had used a steam boat belonging to himself on said route; that he also kept an establishment of horses and stalls for the transportation of said mail all the way by land from Washington to Fredericksburg at seasons when the navigation of steam boats was stopped by ice; and had be obliged, for a considerable portion of every winter during the time he had been so employed in the transportation of the mail, to use his said stages and horses for the transportation of the mails, all the way by land to Fredericksburg, in the mean time laying up his steamboat. That just before the date of said contract, the defendants own steam boat usually employed as aforesaid, on said route, had be disabled, and the defendant was at the time about completing a new boat, called the Sydney, which had been built at Washington, and sent round to Baltimore for the purpose of being fitted with her engine, and other equipments necessary to complete her—for running on said route; and that she lay at Baltimore, in the hands of the workmen there, at the date of said contract; that on the morning of the 5th day of December 1831, Captain Nevitt the Commander of the said steam boat Franklin, refused to go on the said route of the defendants to Fredericksburg, in consequence of the ice then forming in the river, unless he was directed to do so by the

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plaintiffs; that application was then made to Doctor Gunton, the President of the plaintiffs, and he directed the said Captain to proceed as required, and obey the orders of the defendant; that the said Captain did then proceed on the said route, and returned as far as Alexandria, where he stopped, and sent up the mail by land, and although required to do so by the agent of the said defendant, refused to come up to the City of Washington with the said boat in consequence of the Ice which had formed in the river; and that said boat lay at Alexandria frozen up in the harbor, from that time till the 5th February 1832; that at the same time the navigation of the Potomac river became obstructed as aforesaid, the navigation at and from Baltimore became also obstructed from the same cause, and the said steam boat Sydney was also frozen up in the basin at Baltimore, before she had been completely equipped with her Engine; that at the time she was frozen up, she wanted nothing to comple– her equipment, but the insertion of two pipes, a part of her engine, which pipes had been made, but not then put in place, the completing of which would not have required more than two days, and the boat would have been in complete order for being sent round to Washington, and put upon said route; but the ice having interposed, it was deemed by the workmen, and those in charge of the boat, that the insertion of said pipes ought to be postponed till the navigation was clear; that in January 1832, the said pipes were inserted, and the said boat being completely equipped for her voyage, left Baltimore for Washington, as soon as the state of the ice made it practicable to attempt that voyage; was again stopped by the ice, and obliged to put in at Annapolis. whence she proceeded to Washington as soon as the ice left it practicable to recommence and accomplish the voyage and arrived at Washington on the 6th February, 1832, and was the next day, placed by defendant, on said route; that during the whole of the period from the first stopping of the navigation as aforesaid, until the said 6th February, the defendant had abandoned the said route to Potomac creek, and prosecuted the land route from Washington to Fredericksburg.

2. That it was known to and understood by plaintiffs, at the time of the contract in question was made, and was a matter of notoriety, that as soon as the navigation should be closed by ice, the United States mail from Washington to Fredericksburg, would have to be transported all the way by land carriage, instead of being transported by steam boat to Potomac creek, and thence by land to Fredericksburg; and that the said steam boat Franklin, would not be required by defendant, and could not be used under said contract when the navigation should be closed.

3. That it was communicated to the plaintiff by de-

fendant, or his agent, before the time of making said contract, that defendant intended to keep said steam boat in use under said contract, so long as the navigation remained open, and no longer.

To the admissibility of which evidence the said plaintiff by his counsel objected, and the Court refused to permit the same to go to the Jury, but at the instance of plaintiffs gave the following, instruction, viz:

That if the Jury shall believe, from the evidence aforesaid, that the said defendant did, on the 19th day of November, 1831, write to said plaintiffs the said paper of that date, bearing his signature, and that said plaintiff did accept the same by the said paper of the same date, and that said defendant and plaintiffs did respectively write to each other the papers bearing date the 5th and 6th of December, 1831, and that the said Steam Boat Sydney did in fact first arrive in the Potomac river on the 6th February 1832, and was placed on the route to Potomac Creek, mentioned in the said evidence, on the 7th February, 1832, that then the said plaintiffs are entitled to recover, under said contract so proved as aforesaid, at the rate of 35 dollars per diem from the said 20th November 1831, to the said 6th of February, 1832, both inclusive.

To which refusal by the Court aforesaid, to admit the evidence so offered by the said defendant, as also to the granting by the Court of the said instruction aforesaid, so prayed for by the said plaintiffs, the said defendant by his counsel, excepts and prays the Court to sign this bill of exceptions according to the statute in such case made and provided, which is accordingly done, on this 31st day of December, 1833.

W. CRANCH. [SEAL]
JAMES S. MORSELL. [SEAL.]

Test.

W. BRENT, Clk.

And whereas, afterwards, to wit. on the twenty ninth day of July in the year of our Lord one thousand eight hundred and thirty eight, the said William A. Bradley, the defendant aforesaid, by his attorney aforesaid, produced and filed in Court here, the United States writ for the correcting of errors of and upon the Judgment aforesaid, directed to the Judges of the Circuit Court of the District of Columbia, in the County of Washington, and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a Transcript of the record of proceedings of the Judgment afore-

said, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, are hereby transmitted to the said Supreme Court accordingly.

Clerks Cert.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court this 16th day of July, A.D. 1838.

W. BRENT, Clk.